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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,221	04/29/2005	Heinz Focke	Q87775	7071
23373	7590	10/29/2008	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			NGUYEN, PHU HOANG	
ART UNIT	PAPER NUMBER			
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10/29/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/533,221	<b>Applicant(s)</b> FOCKE ET AL.
	<b>Examiner</b> PHU H. NGUYEN	<b>Art Unit</b> 1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 August 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-18,20-24 and 26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-18,20-24 and 26 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgement is made of Amendment received 8/18/2008. Claims 16-18 and 20 are currently amended. Claims 21, 23-24 are previously presented. Claims 1-15, 19, 22, 25 are canceled. Claim 26 is newly added.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/18/2008 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkmann et al. (U.S Pub. No. 2003/0034040).

Regarding claim 16, Barkmann discloses a device for dressing of fibrous material for further processing, in a distributor (D, fig.1) wherein a metering device is located upstream of guides (33,34, fig.1) and downstream of the sifter (12, fig.1) (as seen in the direction of advancement of the satisfactory constituents, primarily or even exclusively

tobacco shreds) from gate (1, fig. 1). Barkmann also discloses the tobacco can be supplied to the sifter via a supply line (9, fig. 1) in the sifter (12, fig. 1), the treated tobacco being capable of being introduced from the sifter directly into the distributor by mean of a duct (reference sign 16, fig.1) (page 5, paragraph 54). Barkman discloses zigzag sifter which is equivalent to the cone type sifter since cone type sifter and zigzag sifter are alternative of each other as admitted by applicant (paragraphs 7- 8).

Barkmann does not disclose the sifter is a separate member outside the distributor. However, due to lack of criticality or unexpected results, it would be obvious to one of ordinary skill in the art to design the distributor with the sifter as a separate member outside the distributor for purposes such as ease to clean or perform maintenance or space saving for the distributor. Also, making parts separable would be obvious to one of ordinary skill in the art since it would be easier to perform maintenance, cleaning and save space in the distributor (See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)). Furthermore, rearrangement of parts would be unpatentable since rearranging the sifter outside of the distributor would not have modified the operation of the device since the sifter is still handling a step upstream of all other processing steps.

Regarding claim 17, Barkmann also discloses the following features:

a) tobacco can be supplied into the sifter (12, fig. 1) by a supply line (9, fig. 1) at an upper side of the sifter housing, an air duct containing an air source (13, fig. 1) wherein the air duct and the sifting duct from a closed flow circulation system (fig. 1).

b) sifted tobacco being capable of being introduced from the sifter directly into the distributor by mean of a duct (reference sign 16, fig.1) (page 5, paragraph 54).

Regarding claim 18, Barkmann discloses the sifter is designed as a zigzag sifter (12, fig. 1) with upright guide body surrounded by a guide wall forming a wavy or zigzag sifting duct. Barkmann does not expressly disclose the guide body consists of a preferably two double cones arranged one above the other. However, cone type sifter and zigzag sifter are alternative of each other as admitted by applicant (paragraphs 7-8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively choose a cone-type sifter instead of a zigzag sifter. Furthermore, adding the second zigzag path in the double cone type sifter configuration is mere duplication of parts that has no patentable significance unless a new and unexpected result is produced. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claim 20, Barkmann discloses the distributor (D, fig. 1) and the sifter (12, fig. 1) are mounted on a machine stand (below reference point 38, between reference points 47 and 49).

Regarding claim 21-22, Barkmann discloses collecting chamber (by reference sign 66) for sifted tobacco is arranged above the guide body, the connecting line (reference sign 16, fig. 1) being connected to the sifter at the collecting chamber.

Regarding claim 23, Barkmann discloses an airbox (47, fig. 1) at the lower area of the sifter (12, fig. 1) and surrounded by a sieve (46, fig. 1) (corresponding to the claimed air-permeable conical sieve (28)).

Regarding claim 24, Barkman conveying the sifted tobacco from the sifter into the distributor housing, but Barkman does not expressly disclose a flaps which are pivoted toward in order to open a lock to the distributor. However, Barkman discloses cell wheel gate (28, fig. 1) that performs the same function as the claimed flaps of the instant claim 24 which is allowing the sifted tobacco to go downwards as it passes through the cell wheel gate. Since both cell wheel gate and flaps are a type of gate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively use one for the other.

Regarding claim 26, in addition to features disclosed above for claims 16 and 18, it would have been obvious to make a separate housing in any shape for the sifter when one modify Barkmann's device to separate the sifter from the distributor for ease of performing maintenance, cleaning and saving space in the distributor.

***Response to Arguments***

The Terminal Disclaimer filed on April 29<sup>th</sup>, 20088 overcomes the double patenting rejection in Office Action filed 11/27/2007.

Applicant's arguments filed 8/18/2008 have been fully considered but they are not persuasive.

Applicant essentially argues that amended claim 16 recites the tobacco is first conveyed through the sifter and after sifting the tobacco is conveyed into the distributor wherein the sifter is outside the distributor. Hence, all of the tobacco is treated by the sifter before the tobacco is introduced into the distributor which is not disclosed by Barkmann. However, due to lack of criticality or unexpected results, it would be obvious

to one of ordinary skill in the art to design the distributor with the sifter as a separate member outside the distributor for purposes such as ease to clean or perform maintenance or space saving for the distributor. Also, making parts separable would be obvious to one of ordinary skill in the art since it would be easier to perform maintenance, cleaning and save space in the distributor (See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)). Furthermore, rearrangement of parts would be unpatentable since rearranging the sifter outside of the distributor would not have modified the operation of the device since the sifter is still handling step upstream of all other processing steps.

In response to applicant's argument that positioning the distributor in a separate position for performing sifting of tobacco and then pass it into the distributor, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHU H. NGUYEN whose telephone number is (571)272-5931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P.N 10/24/2008

*/Philip C Tucker/  
Supervisory Patent Examiner, Art Unit 1791*